VIJAYAN A/L KUNJU KUNJU

v.

YUNOS BIN DOLLAH & ANOR.

HIGH COURT, MUAR
TUAN RICHARD TALALLA J.
[CIVIL SUIT NO. G/S 23(25)-23-1992]
4 JANUARY 1993

TORT: Road accident - Plaintiff riding motorcycle - Collision with motor lorry - Plaintiff suffering severe head injuries - Whether plaintiff was wearing safety helmet - Whether safety helmet was fastened - Quantum of damages - Whether deduction should be made for non-proper use of safety helmet.

The plaintiff was riding a motorcycle when it collided with a motor lorry driven by the first defendant in the opposite direction as a result of which the motorcycle went out of control and the plaintiff came adrift, falling to the ground. As a consequence of the accident the plaintiff suffered a severe head injury.

The question that arose was whether the plaintiff was wearing a securely fastened safety helmet as required by rule 4 of the Motorcycles Safety Helmets Rules 1973 (the said Rules) and if not whether a deduction should be made in respect of the damages awarded to the plaintiff.

Held:

[1] If the plaintiff had complied with the requirements of the said Rules, the helmet would at all material times have remained intact and he may not have suffered the head injury to the extent which he did. The fact that he sustained the injury points either to his not having worn the helmet at all or alternatively to his wearing it but not having it securely fastened resulting in the helmet coming off before his head was struck, thus defeating the very mischief the said Rules provide against.

[2] A safety helmet should be duly worn and if it is not so worn and injury is sustained as a consequence, it is proper for the Court to assess a percentage of which the damages should be reduced.

[Plaintiff's damages reduced by 10%].

Cases referred to:

Froom & Ors. v. Butcher [1975] 3 All ER 520 ***(cit)***
Pasternack v. Poulton [1973] 2 All ER 74 ***(cit)***
Hilder v. Associated Portland Cement Manufacturers, Ltd. [1961] 3 All ER 709 ***(refd)***
Owens v. Brimmel [1976] 3 All ER 765 ***(cit)***
Capps v. Miller [1989] 2 All ER 333 ***(refd)***

Legislation referred to:

Motorcycles Safety Helmets Rules 1973, rr. 3, 4 & 5

For the plaintiff - Rugber Singh; M/s. Rugber Singh & Partners
For the defendant - S. Sagadev; M/s. Saga & Associates

JUDGMENT

Richard Talalla J:

On 30 January 1991 the plaintiff was riding a motorcycle along the Batu 1, Jalan Paloh/ Yong Peng, in Johor in the direction of Yong Peng when the motorcycle collided with a motor lorry driven by the first defendant in the opposite direction as a result of which collision the motorcycle went out of control and the plaintiff came adrift, falling to the ground.

I have considered all the evidence in this case relative to the issue of negligence, the testimony of the witnesses and the documentary evidence. I have had regard to and accept as the salient truth the evidence of the police sketch plan and key which favours the version of the plaintiff as to how this accident happened. In particular as to testimony I accept as true the evidence of PW1, an independent bystander, a lady, who witnessed the accident. I accept her evidence in preference to that of the defendant and his witness who were both partisan. I also accept as true the evidence of the security guard, also an independent witness, who corroborated the evidence of PW1 to the extent that she was present at the scene at the time the accident occurred. I accept in full the submission of Counsel for the plaintiff.

As a consequence of the accident the plaintiff suffered a severe head injury in respect of which damages were awarded in the sum of RM100,000. As observed by the police sergeant who investigated the accident, there was a safety helmet and broken wind shield discovered at the scene by the roadside which by inference I find the plaintiff was wearing immediately before the collision. There is no evidence of the nature of construction of the

helmet. In the Motorcycles Safety Helmets Rules 1973 it is provided in rule 3 as follows:

> The type of helmet which conforms as respects its shape, construction, labelling, marking and other qualities to the requirements of the specification of the Standard Institution of Malaysia RM6.1:1969 published 1 August 1969, is hereby prescribed as a safety helmet for affording protection to a person on a motor-cycle from injury in the event of an accident.

I can see no reason for it not to be assumed that the helmet the plaintiff was wearing was a helmet of the type and nature described in rule 3. It is provided in rule 4 of the Rules that every person, other than a person exempted under rule 5, who drives or rides a motorcycle should wear a safety helmet on his head fitted and securely fastened in the manner required by the nature and construction of the safety helmet.

There was no evidence that the plaintiff was a person exempted under rule 5. Accordingly the plaintiff was obliged not only to wear the safety helmet on his head but also to ensure that it was fitted and securely fastened in the manner required by the nature and construction of the safety helmet. I find that the nature and construction of the helmet was such as to include a means whereby it could be fitted and securely fastened. It has to follow that if the plaintiff had complied with the requirements of the said Rules the helmet would at all material times have remained intact and he may not have suffered the head injury to the extent which he did. The fact that he sustained that injury points either to his not having worn the helmet at all or alternatively that he was wearing it but in doing so he did not have it securely fastened resulting in the helmet coming off before his head was struck, thus defeating the very mischief the said Rules provide against.

There are a number of authorities, all cited by Counsel for the defence, relating to the use of seat belts while travelling in a moving car and the prudence of using the same and the consequence of not doing so. They are *Froom & Ors. v. Butcher* [1975] 3 All ER 520; *Pasternack v. Poulton* [1973] 2 All ER 74; *Hilder v. Associated Portland Cement Manufacturers, Ltd.* [1961] 3 All ER 709 and *Owens v. Brimmel* [1976] 3 All ER 765. Two cases, namely *Capps v. Miller* [1989] 2 All ER 333 and *Hilder v. Associated Portland Cement Manufacturers Ltd.* apply to the instances of failure to use a safety helmet. The principle underlying these cases regardless of whether they refer to the use of seat belts or safety helmets is the same namely that these items should be duly worn and if they are not so worn and injury is sustained as a consequence, it is, in the words of Lord Denning in *Capps* case at p. 342, "proper for the court to assess a percentage of which the damages should be reduced".

The medical evidence indicates that the injury sustained would have been of a lesser degree and its residual effect less severe had he worn a protective crash helmet. There was no evidence as to exactly how much less severe the injury would have been. Some percentage deduction however has to be made. I make a deduction of 10%.